

MAXIE WASSILLIE ET AL.

IBLA 75-17, etc.

Decided November 4, 1974

Appeals from Bureau of Land Management decisions  
rejecting Alaska Native allotment applications.

Vacated and remanded.

1. Alaska: Native Allotments

The requirement of use and occupancy under the Alaska Native Allotment Act contemplates possession at least potentially to the exclusion of others and not mere intermittent use. The Native customs and mode of living must be considered as well as the climate and character of the land. In appropriate circumstances and/or where appellant so requests, the case will be remanded to permit appellant an opportunity to submit additional proof to demonstrate his use and occupancy. The burden is upon appellant to present clear and credible evidence.

APPEARANCES: Henry W. Cavallera, Esq., of the Alaska  
Legal Services Corporation, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

In each case listed in the Appendix, appellant's Native allotment application filed pursuant to the Alaska Native Allotment Act of May 17, 1906, as amended, 43 U.S.C. § 270-1 (1970), 1/ was rejected because of

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1/ Repealed by Sec. 18 of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1617 (Supp. II, 1972), which preserved applications for Native allotments pending at that date.

insufficient proof of use and occupancy. Counsel requested that each case be remanded to afford appellants an opportunity to submit further proofs and for reconsideration in accordance with the remarks of Assistant Secretary Hughes' letter of July 30, 1974, to Mr. Roger Lang, President, Alaska Federation of Natives, Inc., and in accordance with the Secretarial memorandum of October 18, 1973.

The requirement of use and occupancy under the Alaska Native Allotment Act contemplates possession of land at least potentially to the exclusion of others and not mere intermittent use. In considering the nature and extent of such use and occupancy, the Native customs and mode of living, as well as the climate and character of the land, will be considered. 43 CFR 2561.0-5. In appropriate circumstances and/or where the appellant requests, cases before this Board will be remanded to the Bureau for further adjudication in order to permit the appellant the opportunity to submit further proofs and showings of use and occupancy. Id.; Mary T. Akootchook, 17 IBLA 189 (1974); Thomas Akootchook, 17 IBLA 345 (1974). The burden is upon the applicant to present clear and credible evidence to show his entitlement.

We note that the Bureau decisions involved here referred to the Secretary's discretion under the Alaska Native Allotment Act in rejecting the applications. If a rejection of an application is to be based upon the Secretary's discretionary authority, the reasons supporting the exercise of that discretion should be fully set forth to indicate why the land should be retained for public purposes, or otherwise should not be made available for Native allotment, as well as the inadequacies in the applicant's proofs.

In any event, final action rejecting Native allotment applications should not be taken without affording the applicants full opportunity to establish the facts upon which their applications are based.

Assistant Secretary Hughes' letter and the October 18th Memorandum reflect the Departmental policy to permit an Alaska Native a reasonable opportunity to demonstrate his entitlement to allotment and to afford him a reasonable period to submit additional evidence in support of his application. The additional evidence, of course, will not be given substantial weight unless

a full clarifying statement is made and substantive credible evidence is submitted to demonstrate applicant's entitlement. In support of his application appellant will be required to recite, in his own words, his date of birth, names of parents and siblings, marital status and name of spouse (if married) and, where applicable, the spouse's allotment application number, together with such further information as appellant and the Bureau of Land Management deem necessary. All affidavits must be corroborated and must fully identify the witness' relationship to appellant. Each witness must testify of his own actual knowledge concerning the period of time he has known appellant, when he first observed appellant on the land, the use to which appellant puts the land and the period of occupancy in each year. The witness should state whether the land is used or claimed by others and whether he had actual knowledge that the land was claimed by appellant as a Native allotment.

We believe, in the cases listed in the Appendix, that each appellant should have an additional opportunity to satisfactorily explain the manner of his use and occupancy and the quantity of land so used by him.

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decisions appealed from are vacated and the cases remanded. BLM will notify each appellant and afford him an opportunity to submit such additional information or evidence it deems necessary together with such further evidence as appellant may desire to fully demonstrate his entitlement. Each appellant will be afforded a reasonable time in which to submit evidence. Of course, BLM may undertake such further investigations or make such further inquiry as it deems proper. When all the evidence is before it, BLM will consider each case and issue a new decision. If there are adverse parties they should be listed in any decision and given notice of the adjudication of the applications, and an opportunity to express their views.

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Joan B. Thompson  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Martin Ritvo  
Administrative Judge

## APPENDIX

IBLA 75-17	A-052454	Maxie Wassillie
75-18	A-052452	Evan Tutikoff
75-19	AA 7126	Evelyn Anelon
75-20	A-056053	John Etumulla
75-21	A-052458	Elia Anelon
75-22	A-056054	John Stepan
75-25	AA 6345	Eddie Alexie
75-26	AA 6129	Maxie Evan
75-27	AA 7463	Matfie S. Pat
75-30	AA 8160	Peter A. Olympic
75-31	AA 7976	Nicolai Alakayak
75-60	AA 6430	Evan I. John
75-61	AA 6366	William K. Snyder
75-63	AA 7378	Annie Tugatuk
75-64	AA 6357	Andrew Dyasuk
75-65	AA 6217	Annie Parks
75-72	AA 7774	Mary Orloff
75-79 <u>2</u> /	AA 7986	Jesse Ayojiak, Sr.
75-84	AA 7968	Evan Jerry
75-85	AA 6292	Louise Wassillie
75-98	AA 7530	Billie Bartman

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2/ The appeal for Mr. Ayojiak was filed after the 30-day appeal period provided by regulation 43 CFR 4.411, but within the grace period allowed by 43 CFR 4.401. The record shows that the appeal was transmitted on the 30th day of the appeal period and, therefore, the delay in filing is waived in accordance with 43 CFR 4.401.

